

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6133 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
MANSING RAMSWAROOP TOMAR

Versus

COMMISSIONER OF POLICE

-----  
Appearance:

MS DR KACHHAVAH for Petitioner  
MR UR BHATT ADD. GOVERNMENT PLEADER  
for Respondent No. 1, 2, 3

-----  
CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 06/02/98

ORAL JUDGEMENT

By this application, under Article 226 of the Constitution of India, the petitioner who is the detenu calls in question the legality and validity of the detention order passed by the Commissioner of Police, Ahmedabad City on 2nd August 1997, invoking Sec.3(2) of the Gujarat Prevention of Anti-Social Activities Act (hereinafter be referred to as "the Act ").

2. The facts in brief leading the present petitioner to prefer this application may be stated. Against the petitioner about two complaints came to be lodged with different Police Stations in the State. A complaint for the offence under Sec.66(1)(b), 65E and 81 of the Bombay Prohibition Act was lodged with the Bapunagar Police Station, wherein as per the allegation, 460 litres of liquor, without any pass or permit was found in possession of the petitioner. There is another complaint against the petitioner filed in Saher Kotada Police Station and it is pertaining the offence punishable under Sec. 307, 452, 427, read Sec. 34 of I.P.Code. The Police Commissioner, when made inspection of different Police Stations, found that the petitioner was a head-strong person i.e. a tartar & decimator and by different criminal activities, he was terrorising the people. He was extorting money, causing injuries and/or causing damage to the properties. By diabolism, he used to cause the people to bend his way. His hellish and infernal activities disturbing public order were going berserk. No one was, therefore, ready to come forward and state against him. After great persuasion and when assurance was given that the facts about them disclosing their identity would be kept secret, some of the witnesses have under a great tension stated against the petitioner. After the detailed inquiry, the Police Commissioner found that to curb the anti-social, subversive and chaotic activities of the petitioner and unspeakable diabolism terrorising the society, upsetting the public order and leading to anarchy, ordinary law was falling short and was sounding dull. The only way out to hold him in kittle was to detain him under the Act. He, therefore, passed the impugned order. Consequent upon the same, the petitioner came to be arrested and at present, is in custody.

3. On behalf of the petitioner, challenging the impugned order, it is submitted that the order in question is passed after a great delay, as a result, the continuous detention has been rendered illegal. There was no justification for the authority passing the detention order withholding particulars, exercising the privilege under Sec.9(2) of the Act. The detaining authority ought to have disclosed the particulars of the witnesses whose statements were recorded in support of the order passed. No doubt, under Section 9 of the Act, the authority has the privilege, but that is to be exercised judiciously, and not arbitrarily or capriciously so as to deprive the detenu of his right to have effective representation. As the particulars were

not given, the petitioner was deprived of his right to have the effective representation against the order. The instances about the offences noted in the order were not sufficient to brand him a dangerous person or a scoundrel and to form a reasonable belief that maintenance of public order was thereby adversely affected. The statements recorded are vague and necessary particulars when wanting the order is bad in law and is liable to be quashed.

4. Mr.U.R.Bhatt, the learned AGP has vehemently refuted the allegations made, submitting that there is no delay on the part of the authority passing the order of detention, promptly order was passed and in the public interest, the certain facts & particulars are withheld.

5. When a query was made to both the learned advocates, they, only on the point of alleged delay in passing the order and its impact, confined their submissions as that point goes to the root of the case and if I deal with that point alone, the petition is likely to be disposed of. I would not hence dwell upon the other points and would confine myself to the only point namely delay in passing the order and whether the right of the petitioner is prejudicially affected ?

6. It is made crystal clear by the Appex Court in the case of Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and others, reported in AIR 1994 SC 656 that if the detention order is passed after a long delay from the last offence registered or the statements of the witnesses lastly recorded, the order of detention on the ground of delay, is required to be set aside, if the delay prejudices the detenu. It is also made clear that delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person for, in certain cases delay may be unavoidable and reasonable. What is required bylaw is that the delay must be satisfactorily explained by the detaining authority." In the case before Supreme Court, about five months and eight days after the last registration of the offence and four months after the statement which came to be recorded lastly, the detention order was passed, and so on the ground of delay, that detention order was quashed and the detenu was ordered to be set at liberty holding that delay had prejudicially affected detenu's rights.

7. It may be stated that delay in all cases will not be fatal, it depends upon the facts and circumstances of each case, it is serious or excusable consiering time-gap

short or long has to be determined on the facts and circumstances appearing in the particular case. In the case on hand as per the statement before me, the last complaint came to be registered on 13th October, 1996 and thereafter impugned order came to be passed on 19th July, 1997. The order is, therefore, passed about nine months after the last complaint came to be recorded. Ordinarily the detention is found to be the only way out, the authority will be quick in passing the order so that the people at large suffering hardships and feeling insecured can be made free and nefarious activities of the person can be promptly curbed. If, there is a delay, the same has to be explained failing which necessary assumption in favour of detenu will arise. In this case, no doubt affidavit of the Police Commissioner is filed, but he has not explained why delay is caused in passing the order. As no explanation is afforded, it should be assumed that in fact there was no justification to pass the order, but later on for the reasons, though not just and not disclosed the authority was compelled to pass the order. In view of the above stated decision, therefore, the order cannot be allowed to stand.

7. For the aforesaid reasons, this petition is allowed. The order of detention passed on 2nd August, 1997, by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and the petitioner-detenu is ordered to be set at liberty forth with, if not required in any other case. Rule accordingly made absolute.

-----

(ccs)